

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
07/26/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0766-R-2022
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Elbow Creek Ranch

CASE 43B-0766-R-2022

43B 36727-00

43B 107136-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Elbow Creek Ranch claims 43B 36727-00 and 43B 107136-00 each appeared in the Preliminary Decree with an issue remark. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On May 24, 2023 Elbow Creek Ranch filed a Notice Of Appearance And Response To Court Order. This document is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 43B 36727-00, the Preliminary Decree states the point of diversion legal description is the NWNENW section 22, T5S, R9E, PARK and includes the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

As stated in the Response To Court Order, the Water Resources Survey for Park County (1951) shows the ditch diverting from Magee creek at that legal description. The point of diversion issue remark should be removed as erroneous.

The Preliminary Decree also includes the following notice remark:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE SOURCE, POINT OF DIVERSION AND PLACE OF USE BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

This remark provides notice of changes made during the Temporary Preliminary Decree proceedings. The remark does not raise unresolved issues which need to be addressed. The

remark should be removed as having served its notice purpose.

2. For claim 43B 107136-00, the Preliminary Decree states that the source name is SPRING, UNNAMED TRIBUTARY OF MCGEE CREEK and includes the following issue remark:

THE SOURCE MAY BE INCORRECT. THE SOURCE APPEARS TO BE MAGEE CREEK. SEE DNRC MEMORANDUM DATED 08/16/1994.

The source name should be SPRING, UNNAMED TRIBUTARY OF MAGEE CREEK. The source name issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

Benjamin S. Sudduth
Sudduth Law, PLLC
1050 East Main Street, Suite 3B
PO Box 507
Bozeman, MT 59771-0507
(406) 272-2390
benjamin@sudduthlaw.com

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 36727-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ELBOW CREEK RANCH
%MT PARADISE LLC
1924 W STEVENS ST SUITE 203
BOZEMAN, MT 59718

Priority Date: OCTOBER 1, 1884

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER

Flow Rate: 282.80 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 245.00

***Source Name:** MAGEE CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNENW	22	5S	9E	PARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: LOWER WALKER DITCH

Period of Use: MAY 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	76.00		S2SW	10	5S	9E	PARK
2	4.00		W2SWSE	10	5S	9E	PARK
3	80.00		W2NW	15	5S	9E	PARK
4	18.50		W2E2NW	15	5S	9E	PARK
5	56.50		W2SW	15	5S	9E	PARK
6	10.00		W2NESW	15	5S	9E	PARK
Total:	245.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

36721-00

36722-00

36727-00

36728-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 107136-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELBOW CREEK RANCH
%MT PARADISE LLC
1924 W STEVENS ST SUITE 203
BOZEMAN, MT 59718

Priority Date: DECEMBER 31, 1942

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 20.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF MAGEE CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNNE	23	5S	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SEWNNE	23	5S	9E	PARK